

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ APR 14 2010 ★

HARLEYSVILLE WORCESTER INSURANCE
COMPANY, a/s/o HOWARD PHILLIPS
D/B/A 205 EAST MAIN STREET
355 Maple Avenue
Harleysville, PA 19438-2297

Plaintiff

v.

SOUND REFRIGERATION AND AIR
CONDITIONING, INC.
58 Old Stewart Avenue
Garden City Park, NY 11040

Defendant.

CASE NO. BROOKLYN OFFICE
VERIFIED COMPLAINT AND
JURY DEMAND

CV 10 - 1655

BIANCO, J.

COMPLAINT

The Plaintiff, by and through the undersigned attorney, hereby brings this Complaint and
alleges as follows:

THE PARTIES

1. Plaintiff, Harleysville Worcester Insurance Company a/s/o Howard Phillips d/b/a 2005 East Main Street (hereinafter "Harleysville"), is a Pennsylvania corporation that maintains a principal place of business located at 355 Maple Avenue, Harleysville, Pennsylvania. At all times relevant hereto, Harleysville engaged in the business, among other areas, of underwriting property and casualty insurance.

2. Defendant, Sound Refrigeration and Air Conditioning, Inc. (hereinafter "Sound Refrigeration"), is a New York corporation with a principal place of business located at 58 Old Stewart Avenue, Garden City Park, NY 11040, and at all times relevant hereto was in the

WALL, M.J.

business of constructing, installing, inspecting, repairing, and maintaining commercial HVAC systems.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over each of the named parties.
4. Subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1332, as this is an action between citizens of different states, in which the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
5. Venue in this action is in the Eastern District of New York pursuant to 28 U.S.C. § 1391, as the claim arose in this district.
6. Defendant Sound Refrigeration maintains an office in the State of New York and regularly conducts business in the County of Suffolk.

FACTUAL ALLEGATIONS

7. At all time material hereto, Howard Phillips d/b/a 205 East Main Street (hereinafter "Howard Phillips" or "Plaintiff's Insured") owned real property located at 124 East Main Street, Huntington, New York (hereinafter "The Property").
8. Plaintiff, Harleysville, issued an insurance policy to Howard Phillips insuring against losses to certain real and personal property, as well as for other losses, which included the property and contents located therein (hereinafter "Harleysville's Policy").
9. Prior to May 1, 2008, Plaintiff's Insured entered into a contract with Sound Refrigeration to perform certain repairs in Suite #9, a lower level unit at The Property.
10. At all times material hereto, Suite #9 was leased to Dr. Thomas Panichella, MD.

11. On May 1, 2008, the agents, servants, employees, and/or contractors of Sound Refrigeration installed a zone valve associated with a baseboard heater in Suite #9 at The Property.

12. These repairs required the agents, servants, employees, and/or contractors of Sound Refrigeration to use a plumbing torch to solder a 1/2 inch section of copper pipe.

13. The agents, servants, employees, and/or contractors of Sound Refrigeration completed the repairs at or around 4:30 p.m.

14. Dr. Thomas Panichella, MD, closed his office for the day at or around 5:15 p.m.

15. At or around 9:15 p.m., a fire was discovered inside Suite #9 at The Property, causing substantial damages.

16. As a result of the fire, Plaintiff's Insured sustained extensive fire, smoke, and water damage to his real property, as well as other losses.

17. The fire that occurred on May 1, 2008 at The Property was the direct and proximate result of the negligent use of a plumbing torch by the agents, servants, employees, and/or contractors of Sound Refrigeration.

18. Pursuant to the terms and conditions of Harleysville's Policy, Harleysville made payments to or on behalf of Howard Phillips in the amount of \$346,787.52.

19. As a result of the aforesaid payments and under the terms and conditions of Harleysville's Policy, Harleysville is subrogated to the rights of Howard Phillips against Sound Refrigeration with respect to the damages compensable under Harleysville's Policy.

COUNT I – NEGLIGENCE

20. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 19 as though fully set forth herein at length.

21. The defendant, Sound Refrigeration, had a duty to exercise reasonable care while performing all work at The Property, so not to create a foreseeable risk of harm to persons or property, including the risk of fire.

22. The sole cause of Howard Phillips' damages and losses was the negligence, carelessness, recklessness, and/or negligent omissions of defendant, Sound Refrigeration, acting independently and by and through its duly authorized agents, servants, employees, and/or contractors, in:

- a. carelessly using a plumbing torch while installing a zone valve associated with a baseboard heater;
- b. failing to take proper and adequate precautions to keep Howard Phillips' premises free and safe from fire;
- c. utilizing methods which created an unreasonable risk of fire;
- d. failing to observe a proper fire watch while working with a plumbing torch in close proximity to The Property;
- e. failing to properly supervise and inspect the work being performed by its agents, servants, employees, and/or contractors; and
- f. failing to discover, repair, and/or correct the defects and/or deficiencies that led to the fire.

23. Defendant's careless and negligent conduct, acts, and/or omissions, as averred above, was a substantial factor and/or direct and proximate cause of the fire and associated smoke and water damage of May 1, 2008.

24. As a direct and proximate result of the defendant's negligence, Plaintiff's Insured sustained damages in the amount of \$346,787.52.

WHEREFORE, Plaintiff, Harleysville Worcester Insurance Company a/s/o Howard Phillips d/b/a 205 East Main Street demands judgment in its favor and against defendant, Sound Refrigeration and Air Conditioning, Inc., in an amount in excess of \$346,787.52, together with interest, costs, and other such relief as this Honorable Court deems just and proper under the circumstances.

COUNT II – BREACH OF CONTRACT

25. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 24 as though fully set forth herein at length.

26. Plaintiff's Insured entered into a written and/or oral contract with defendant, Sound Refrigeration, wherein defendant agreed to install a zone valve on a baseboard heater in Suite #9 of The Property.

27. Plaintiff's Insured performed all valid conditions precedent.

28. In failing to perform its obligations under the contract in a careful, prudent manner, defendant, Sound Refrigeration, acting through its agents, servants, employees, and/or contractors breached its contract with Plaintiff's Insured.

29. As a direct and proximate result of defendant's breach of contract, Plaintiff's Insured sustained damages in the amount of \$346,787.52.

WHEREFORE, Plaintiff, Harleysville Worcester Insurance Company a/s/o Howard Phillips d/b/a 205 East Main Street demands judgment in its favor and against defendant, Sound Refrigeration and Air Conditioning, Inc., in an amount in excess of \$346,787.52, together with interest, costs, and other such relief as this Honorable Court deems just and proper under the circumstances.

COUNT III – BREACH OF WARRANTY

30. Plaintiff hereby incorporates by reference the allegations contained paragraphs 1 through 29 as though fully set forth herein at length.

31. At the time and place at which Plaintiff's Insured contracted with defendant, Sound Refrigeration, defendant expressly and impliedly warranted that such work would be performed in a proper and workmanlike manner.

32. Plaintiff's Insured performed all valid conditions precedent.

33. Defendant, Sound Refrigeration, acting through its agents, servants, employees, and/or contractors breached its express and implied duties that the aforesaid work would be completed in a proper and workmanlike manner when it caused a fire which resulted in damages to The Property.

34. As a direct and proximate result of defendant's breach of warranty, Plaintiff's Insured sustained damages in the amount of \$346,787.52.

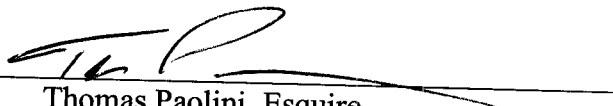
WHEREFORE, Plaintiff, Harleysville Worcester Insurance Company a/s/o Howard Phillips d/b/a 205 East Main Street demands judgment in its favor and against defendant, Sound Refrigeration and Air Conditioning, Inc., in an amount in excess of \$346,787.52, together with interest, costs, and other such relief as this Honorable Court deems just and proper under the circumstances

Respectfully submitted,

LAW OFFICES OF ROBERT A. STUTMAN, P.C.

Dated: 4/13/10

BY:


Thomas Paolini, Esquire
Law Offices of Robert A. Stutman, P.C.
20 East Taunton Road, Suite 403
Berlin, NJ 08009

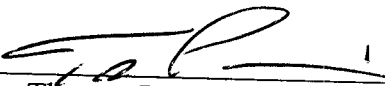
(856) 767-6800
Attorney for Plaintiff, The Harleysville
Worcester Insurance Company, a/s/o
Howard Phillips d/b/a 205 East Main Street

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury.

LAW OFFICES OF ROBERT A. STUTMAN, P.C.

Dated: 4/13/10

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